

No. 15090

United States
Court of Appeals
for the Ninth Circuit

SAMUEL J. CHASE and JEANNETTE S.
CHASE,

Petitioners,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

**Petition to Review a Decision of the Tax Court
of the United States**

FILE

JUN -8 1956



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

LESLIE W. IRVING, ESQ.,
1212 Broadway,
Oakland 12, Calif.

For Respondent:

CHARLES K. RICE,
Asst. Attorney General,

LEE A. JACKSON,
Atty., Dept. of Justice, Tax Div.,
Washington, D.C.

The Tax Court of the United States

Docket No. 56183

SAMUEL J. CHASE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1955

- Feb. 1—Petition received and filed. Taxpayer notified. Fee paid.
- Feb. 2—Copy of petition served on General Counsel.
- Feb. 1—Entry of appearance of Leslie W. Irving as counsel filed.
- Feb. 1—Request for Circuit hearing in San Francisco, California, filed by taxpayer. 2/8/55. Granted.
- Mar. 28—Answer filed by General Counsel.
- Mar. 31—Copy of answer served on taxpayer, San Francisco, California.
- Aug. 16—Joint motion to consolidate with dockets 56169 and 56230 and for submission under Rule 30 filed.
- Aug. 16—Stipulation of facts filed.
- Aug. 24—Order, assigning proceeding to Judge Kern, Div. 16, for disposition. Time for filing briefs to be fixed by said Judge, entered.

1955

- Sept. 9—Order, allowing parties until 10/13/55 for filing briefs and until 10/28/55 for filing reply briefs, entered.
- Oct. 10—Brief filed by taxpayer. 10/14/55 Copy served.
- Oct. 13—Brief filed by respondent. Served 10/14/55.
- Oct. 25—Reply brief filed by taxpayer. Copy served 10/26/55.
- Dec. 6—Opinion filed, Kern, Judge. Decision will be entered for the respondent. Copy served 12/6/55.
- Dec. 9—Decision entered, Kern, Judge, Div. 16.

1956

- Jan. 3—Order, vacating decision and decision entered, Judge, Kern, Div. 16.
- Mar. 6—Bond in the amount of \$4,500.00 approved and filed.
- Mar. 6—Petition for review by United States Court of Appeals, Ninth Circuit, with assignments of error filed by petitioner.
- Mar. 6—Proof of service filed.
- Mar. 16—Designation of contents of record on review with acknowledgment of service thereon filed by petitioner.

In the Tax Court of the United States

Docket No. 56230

JEANNETTE S. CHASE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1955

Feb. 7—Petition received and filed. Taxpayer notified. Fee paid.

Feb. 8—Copy of petition served on General Counsel.

Feb. 7—Entry of appearance of Leslie W. Irving as counsel filed.

Feb. 7—Request for Circuit hearing in San Francisco, California, filed by taxpayer. 2/9/55. Granted.

Mar. 28—Answer filed by General Counsel.

Mar. 31—Copy of answer served on taxpayer, San Francisco, California.

Aug. 16—Joint motion to consolidate with dockets 56169 and 56183 and for submission under Rule 30 filed.

Aug. 16—Stipulation of facts filed.

Aug. 24—Order, assigning proceeding to Judge Kern, Div. 16, for disposition. Time for filing briefs to be fixed by said Judge, entered.

1955

- Sept. 9—Order, allowing parties until 10/13/55 for filing briefs and until 10/28/55 for filing reply briefs, entered.
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- Oct. 13—Brief filed by respondent. Served 10/14/55.
- Oct. 25—Reply brief filed by taxpayer. Copy served 10/26/55.
- Dec. 6—Opinion filed, Kern, Judge. Decision will be entered for the respondent. Copy served 12/6/55.
- Dec. 9—Decision entered, Kern, Judge, Div. 16.

1956

- Jan. 3—Order, vacating decision and decision entered, Judge, Kern, Div. 16.
- Mar. 6—Bond in the amount of \$4,500.00 approved and filed.
- Mar. 6—Petition for review by United States Court of Appeals, Ninth Circuit, with assignments of error filed by petitioner.
- Mar. 6—Proof of service filed.
- Mar. 16—Designation of contents of record on review with acknowledgment of service thereon filed by petitioner.

[Title of Tax Court and Cause.]

Docket No. 56183

PETITION FOR REVIEW OF DEFICIENCY
DETERMINATION

The above-named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Bureau Symbols Ap:SF:AA:SMS 90-D-BFP), dated November 29, 1954, and as a basis of his proceeding, alleges as follows:

1. The petitioner is an individual with residence at 5965 Keith Avenue, Oakland 18, California. Petitioner and Jeannette S. Chase are husband and wife, and filed separate returns for the period here involved with the Collector of Internal Revenue, San Francisco, California.

2. The Notice of Deficiency (a copy of which is attached and marked Exhibit A) was mailed to the Petitioner on November 29, 1954.

3. The deficiency, as determined by the Commissioner, is in income taxes for the calendar year 1952 in the amount of \$2,155.78, the total amount of which is in controversy.

4. The determination of tax set forth in said Notice of Deficiency is based upon the following errors:

(a) The Commissioner has erroneously determined that Petitioner is not entitled to report the

sum of \$22,500.00 received in 1952 (being 100 per cent of the compensation received by said Petitioner for personal services covering a period of more than thirty-six calendar months from the beginning to the completion of said services) under Section 107 (a) of the Internal Revenue Code.

(b) The Commissioner has erroneously combined separate, distinct, independent and unrelated services performed by said Petitioner to support a contention that the compensation received for said services was less than 80 per cent of the total compensation received for personal services rendered.

(c) The Commissioner erred in determining a deficiency against Petitioner.

5. The facts upon which the Petitioner relies as a basis of this proceeding are as follows:

(a) At all times herein mentioned said Samuel J. Chase was an attorney-at-law, duly and regularly licensed to practice his profession.

(b) On December 5, 1946, George L. and Ida Leiter, his wife, executed a joint and mutual Will which provided among other things as follows:

“We hereby declare that although each of us has from time to time had and received property which was or is, or might be considered to be, separate property of one or the other of us and, likewise, we have taken and held and now hold property in joint tenancy with right of survivorship and bank accounts and other items of property owned by or payable to either of

us or to the survivor, nevertheless, our property has, during our marriage, become so intermixed that it would be impractical, if not impossible, to trace the strict ownership of, and title to the various items thereof so as to distinguish separate property from community property and we therefore agree and stipulate that all said property is and shall be deemed to be community property.”

(c) At the time of the execution of said joint and mutual Will George and Ida Leiter owned property of the approximate value of \$350,000 which included property held in joint tenancy or otherwise apparently payable to the survivor of the following approximate values:

Annuities	\$ 36,000.00
Bank accounts	\$ 96,500.00
Bonds—United States Series G	\$101,000.00
Real estate	\$ 60,000.00

(d) George L. Leiter died on January 23, 1947, and Ida Leiter, as survivor, claimed among other things, the properties held in joint tenancy or otherwise apparently payable to the survivor.

(e) Petitioner held innumerable conferences with Ida Leiter and Burdeitta L. Forrest for the purpose of effecting an amicable settlement of the controversy, but no such result was obtained.

(f) On February 10, 1947, Petitioner and Burdeitta L. Forrest, decedent's daughter, were ap-

pointed co-executors of the estate of George L. Leiter, deceased, and at that time Petitioner endeavored to have the Probate Court determine that the properties held in joint tenancy or otherwise apparently payable to the survivor were part of the estate. The Court refused to so rule.

(g) Thereafter, Petitioner filed a petition for instructions with the Probate Court for the purpose of resolving the controversy, the matter was heard on various dates, the Court refused to rule on the issue, and the matter was dropped from the calendar.

(g) Thereafter, Petitioner filed a petition for in-limited the estate proper to the separate property of George L. Leiter which was of a total value of \$70,300.00.

(i) By letter dated July 10, 1947, the Treasury Department advised Ida Leiter that the co-owner and P.O.D. Bonds could be paid to her or reissued in her name alone or in her name with a co-owner or a beneficiary, and by letter dated August 6, 1947, the Treasury Department transmitted forms to Ida Leiter for that purpose.

(j) On September 3, 1947, Petitioner filed an action in the Superior Court of the State of California, in and for the County of Alameda, Number 205572 and titled, "Complaint for Declaratory Judgment and Equitable Relief, for Possession of Real and Personal Property, and to Quiet Title Thereto and for Injunction and Accounting."

(k) In said case of Chase vs. Leiter Petitioner was represented by Chas. Wade Snook, Defendant, Ida Leiter, by Hagar, Crosby and Crosby, defendant, Burdeitta L. Forrest, by Ben F. Woolner, Burchard Styles and Elson Jones. The United States Attorney threatened to intervene in said action in support of the contention that the Treasury Regulations governed the disposition of Government Bonds.

(ll) On April 12, 1948, said action was set for trial for May 4, 1948.

(m) On April 15, 1948, Petitioner entered into an agreement with Leslie W. Irving, an attorney, which provided in substance that Leslie W. Irving would handle the case of Chase vs. Leiter for Petitioner, that compensation for his services would be contingent on success in the litigation and subsequent approval of a petition for compensation by the Probate Court, and that said Leslie W. Irving would assist in presenting said petition for compensation to the Probate Court.

(n) Pursuant to said contract, said Leslie W. Irving did the following among other things: Handled the case in the Trial Court, appealed from the decision of the Trial Court, and handled the appeal before the Appellate Court (the Appellate Court's decision was a 100 per cent victory for Petitioner's contentions), prepared and presented to the Probate Court a Petition for Compensation for Extraordinary Services Rendered pursuant to said contract.

(o) Petitioner performed a variety of services incident to the trial of the action, the appeal from the Trial Court's decision, the preparation and presentation of the appeal, the conservation of assets, the preparation and presentation of the petition for compensation for extraordinary services rendered.

(p) The services rendered by Petitioner were personal services, said services covered a period of more than thirty-six months, said services were separate and distinct from all other services rendered, and on or about May 28, 1952, Petitioner received the sum of \$22,500.00 being the amount ordered paid by the Probate Court for services rendered in connection with the case of Chase vs. Leiter, and being 100 per cent of the compensation therefor, and Petitioner reported said compensation under section 107(a) of the Internal Revenue Code—see Exhibit B attached hereto.

(q) During May of 1950, the Internal Revenue Department initiated an audit of the income tax returns of George and Ida Leiter, covering the period from 1941 to 1946. The Government claimed that George and Ida Leiter had not fully reported their income for said period and initially threatened a deficiency which would have wiped out the entire estate. Petitioner performed services in connection with the Government's income tax claim, the matter was settled by the payment of additional tax, penalty, and interest in the total amount of \$46,410.14, and a separate petition for compensation, based

largely on said services, was filed on June 29, 1953, and on November 12, 1953, the Court awarded Petitioner the sum of \$20,000.00 for services rendered primarily in connection with said income tax matter. Pursuant to said Court's Order, Petitioner received the sum of \$5,000.00 in 1953, and the sum of \$15,000.00 in 1954.

(r) The services rendered by Petitioner in connection with the case of Chase vs. Leiter were separate, distinct, severable, and unrelated to services rendered in connection with said income tax matter, and the bases for allowing compensation in the two situations were entirely different.

Wherefore, Petitioner prays that this Court may hear the proceeding and determine that Petitioner is entitled to report the sum of \$22,500.00 received in 1952, under Section 107(a) of the Internal Revenue Code, that the Commissioner is in error in determining deficiency, and that there is no Deficiency due.

/s/ SAMUEL J. CHASE.

Duly verified.

Exhibit A

U. S. Treasury Department
Internal Revenue Service
Regional Commissioner
Appellate Division—San Francisco Region
Room 1010, 870 Market Street
San Francisco 2, California

November 29, 1954.

In Replying Refer to
AP:SF:AA:SMS
90-D-BFP

Mr. Samuel J. Chase,
5965 Keith Avenue,
Oakland 18, California.

Dear Mr. Chase:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1952, discloses a deficiency of \$2,155.78 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with the Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday,

Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, Room 1010, 870 Market Street, San Francisco 2. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is the earlier.

Very truly yours,

T. COLEMAN ANDREWS,
Commissioner,

By WILLIAM H. LAWDER,
Associate Chief, Appellate
Division.

Enclosures :

Statement

Form 1276

Agreement Form

Audit Statement

Ap:SF:AA:SMS
90D-BFP

Samuel J. Chase,
5965 Keith Avenue,
Oakland 18, California.

Tax Liability for the Taxable Year Ended December 31, 1952.

Year		Deficiency
1952	Income Tax	\$2,155.78

In making this determination of your income tax liability, careful consideration has been given to your protest dated August 25, 1954; to the statements made at the conference held on November 3, 1954.

Adjustments to Income
Year: 1952

Net income as disclosed by return	\$16,946.01
Net income as adjusted	\$16,946.01

Explanation of Adjustments

On or about September 8, 1952, you received a fee as compensation for personal services rendered to the Estate of George L. Leiter to which you applied the provisions of Section 107(a) of the Internal Revenue Code.

Due to the fact that the fee received in 1952 does not constitute at least 80 per centum of the total compensation received by you for personal services rendered to the Estate of George L. Leiter said fee is included in gross income for the calendar year 1952 without the benefits provided in Section 107(a) of the Internal Revenue Code.

Computation of Income Tax

Net or adjusted gross income, from Schedule No. 1	\$16,946.01	
Exemptions: 2 at \$600.00 each	1,200.00	
		<hr/>
Income subject to tax	\$15,746.01	
Income tax		\$ 5,681.39
Self-employment tax (from return or as corrected)		0
Total tax liability		\$ 5,681.39
		<hr/>
Income tax liability disclosed by original return Account Number 53AF701797		
First California District		\$ 3,525.61
		<hr/>
Deficiency in income tax		\$ 2,155.78
		<hr/> <hr/>

EXHIBIT B

Samuel J. Chase and Jeannette S. Chase—Special Computation Tax Pursuant to Internal Revenue Code, Section 107—For Recovery of Assets on Behalf of the Estate of George L. Leiter, Deceased

George L. Leiter and Ida Leiter, his wife, appointed Samuel J. Chase as one of the Executors of their Will.

George L. Leiter died on January 23, 1947, and Samuel J. Chase, as one of the executors immediately commenced proceedings for appointment as executor and, in addition, to recover for the benefit of the estate the assets of the estate. First, efforts were made immediately upon appointment and in an informal manner. Efforts were then made incident to the ordinary proceedings in probate. All of which being unsuccessful, on September 3rd, 1947, Samuel J. Chase commenced an action against his co-executor and other persons to recover various properties for said estate.

After partial recovery in the trial court and complete recovery upon appeal, a petition for a compensation was filed in the probate action, and, after extended testimony, on February 14, 1952, by order of the Superior Court, \$22,500.00 was ordered and directed to be paid to Samuel J. Chase as extraordinary compensation for services rendered to the estate for his part in recovering these assets.

On May 28, 1952, after said order directing payment had become final, Samuel J. Chase received the sum of \$22,500.00 for services rendered from January 23, 1947, to date of payment in connection with this matter. This was the entire amount paid for his extraordinary services. In addition, however, Samuel J. Chase had received the sum of \$3,062.00 in the year 1950, representing ordinary compensation as executor.

The following shows the proration of income to the tax return periods:

Year	Amount Allocable	Samuel J. Chase	Jeanette S. Chase
1947 (11 mos.)	\$ 3,867.19	\$ 1,933.59	\$ 1,933.59
1948 (year)	4,218.75	2,109.38	2,109.38
1949 (year)	4,218.75	2,109.38	2,109.38
1950 (year)	4,218.75	2,109.38	2,109.38
1951 (year)	4,218.75	2,109.38	2,109.38
1952 (5 mos.)	1,757.81	878.89	878.89
Totals	<u>\$22,500.00</u>	<u>\$11,250.00</u>	<u>\$11,250.00</u>

Samuel J. Chase

Year	Adjusted Income Reported	Tax Paid	Additional Income	Amended Adjusted Income	Total Tax	Additional Tax
1947	\$5,216.23	\$738.69	\$ 1,933.59	\$7,149.82	\$1,205.50	\$ 466.81
1948	3,703.80	362.00	2,109.38	5,813.18	745.10	383.10
1949	4,408.60	483.00	2,109.38	6,517.98	906.35	423.35
1950	4,289.43	478.00	2,109.38	6,398.81	913.74	435.74
1951	4,253.17	553.00	2,109.38	6,362.55	1,034.89	481.89
			<hr/>			
			\$10,371.11			\$2,190.89
1952—Additional income						
reported in 1952 return			878.89			
			<hr/>			
			\$11,250.00			

Jeannette S. Chase

Year	Adjusted Income Reported	Tax Paid	Additional Income	Amended Adjusted Income	Total Tax	Additional Tax
1947	\$5,299.03	\$871.85	\$ 1,933.59	\$7,232.62	\$1,358.30	\$ 486.45
1948	3,817.25	495.00	2,109.38	5,926.63	908.33	413.33
1949	4,540.18	501.00	2,109.38	6,649.56	936.46	435.46
1950	4,445.42	625.00	2,109.38	6,554.80	1,092.61	467.61
1951	4,384.07	708.00	2,109.38	6,493.45	1,232.23	524.23
			<hr/>			
			\$10,371.11			\$2,327.08
1952—Additional income						
reported in 1952 return			878.89			
			<hr/>			
			\$11,250.00			

Received and filed February 1, 1955, T.C.U.S.

Served February 2, 1955.

[Title of Tax Court and Cause.]

Docket No. 56183

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above-named, by his attorney, R. P. Hertzog, Acting Chief Counsel, Internal Revenue Service, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1 to 3, inclusive. Admits the allegations contained in paragraphs 1 to 3, inclusive, of the petition.

4(a) to (c), inclusive. Denies that the Commissioner erred in the determination of the deficiency as alleged in subparagraphs (a) to (c), inclusive, of paragraph 4 of the petition.

5(a) to (l), inclusive. Admits the allegations contained in subparagraphs (a) to (l), inclusive, of paragraph 5 of the petition.

(m) to (r), inclusive. For lack of information or knowledge sufficient to form a belief, denies the allegations contained in subparagraphs (m) to (r), inclusive, of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ R. P. HERTZOG,
Acting Chief Counsel,
Internal Revenue Service.

Filed March 28, 1955, T.C.U.S.

The Tax Court of the United States

Docket No. 56169

LESLIE W. IRVING,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 56813

SAMUEL J. CHASE,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 56230

JEANNETTE S. CHASE,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

JOINT MOTION FOR CONSOLIDATION AND
SUBMISSION UNDER RULE 30 OF THE
RULES OF PRACTICE

Comes now the parties to the above-entitled proceeding, by their respective counsel, and moves that

said proceedings be consolidated and be submitted to the Court on the pleadings and written stipulations of facts duly signed and submitted herewith under the provisions of Rule 30 of the Rules of Practice before the Tax Court of the United States; and that the Court fix a time for filing briefs within the provisions of Rule 30(a) of the Tax Court's Rules of Practice.

Wherefore, it is prayed that the Court will grant this motion.

/s/ LESLIE W. IRVING,
Counsel for Petitioners.

/s/ JOHN POTTS BARNES,
Chief Counsel, Internal Revenue Service, Counsel
for Respondent.

Filed August 16, 1955, T.C.U.S.

Granted August 24, 1955; J. Murdock, Judge.

Served August 29, 1955.

[Title of Tax Court and Causes.]

Docket Nos. 56169, 56183 and 56230

STIPULATION OF FACTS

It is hereby mutually stipulated and agreed by and between the parties hereto, through their respective counsel of record, that the following statements are true; that this proceeding may stand

submitted on the filing of this stipulation of facts; and that the Court fix a time for filing briefs within the provision of Rule 30(a) of the Tax Court's Rules of Practice.

1. Petitioners, Leslie W. and Ruth L. Irving, are individuals with residence at 2945 Russell Street, Berkeley, California. Said petitioners are husband and wife and filed a joint return for the period here involved with the Collector of Internal Revenue, San Francisco, California.

2. The Notice of Deficiency, a copy of which is attached to the Petition, in Docket No. 56169, was mailed to said petitioners on November 29, 1954.

3. The deficiency against petitioners, Leslie W. and Ruth L. Irving, as determined by the Commissioner, is in income taxes for the calendar year 1952 in the amount of \$19,468.06, the total amount of which is in controversy.

4. At all times herein mentioned said Leslie W. Irving was an attorney at law, duly and regularly licensed to practice his profession.

5. Petitioner Samuel J. Chase is an individual with residence at 5965 Keith Avenue, Oakland 18, California. Said petitioner and Jeannette S. Chase are husband and wife, and filed separate returns for the period here involved with the Collector of Internal Revenue, San Francisco, California.

6. The Notice of Deficiency, a copy of which is attached to the Petition in Docket No. 56183, was

mailed to petitioner, Samuel J. Chase, on November 29, 1954.

7. The deficiency of Samuel J. Chase as determined by the Commissioner is in income taxes for the calendar year 1952 in the amount of \$2,155.78, the total amount of which is in controversy.

8. At all times herein mentioned said Samuel J. Chase was an attorney at law, duly and regularly licensed to practice his profession.

9. Petitioner Jeannette S. Chase is an individual with residence at 5965 Keith Avenue, Oakland 18, California. Said petitioner and Samuel J. Chase are husband and wife, and filed separate returns for the period here involved with the Collector of Internal Revenue, San Francisco, California.

10. The Notice of Deficiency of Jeannette S. Chase, a copy of which is attached to the Petition in Docket No. 56230, was mailed to the petitioner, Jeannette S. Chase, on November 29, 1954.

11. The deficiency as determined by the Commissioner is in income taxes for the calendar year 1952 in the amount of \$2,014.40, the total amount of which is in controversy.

12. On December 5, 1946, George L. and Ida Leiter, his wife, executed a written contract, a copy of which is in the Clerk's Transcript on Appeal, pages 14 to 21, inclusive, which is attached hereto and marked Exhibit 1-A. Said contract provides, among other things, as follows:

“We hereby declare that although each of us has from time to time had and received property which was or is, or might be considered to be, separate property of one or the other of us and, likewise, we have taken and held and now hold property in joint tenancy with right of survivorship and bank accounts and other items of property owned by, or payable to either of us or to the survivor, nevertheless, our property has, during our marriage, become so intermixed that it would be impractical, if not impossible, to trace the strict ownership of, and title to the various items thereof so as to distinguish separate property from community property and we therefore agree and stipulate that all said property is, and shall be deemed to be community property.”

13. George L. Leiter died on January 23, 1947. At the time of the execution of said contract, George and Ida Leiter owned property of the approximate value of \$350,000.00 which included property held in joint tenancy or otherwise apparently payable to the survivor of the following approximate values:

Annuities	\$ 36,000.00
Bank Accounts	96,500.00
Bonds—U. S. Series G	101,000.00
Real Estate	60,000.00

14. Following the death of George L. Leiter, Ida Leiter, as survivor, claimed, among other things, the

properties held in joint tenancy or otherwise apparently payable to the survivor. Samuel J. Chase and Burdeitta L. Forrest, decedent's daughter, were named as executors of the Last Will and Testament of George L. Leiter, and they were appointed as such by the Superior Court of the State of California, in and for the County of Alameda and letters testamentary issued on February 11, 1947.

15. Charles Wade Snook was the sole attorney for said executors from the date of their appointment until the fourteenth day of May, 1948.

16. Samuel J. Chase contended that said contract converted all of the properties of George and Ida Leiter into community property, that the executors were entitled to possession, and that Ida Leiter was limited by the terms of said contract to the income therefrom.

17. Samuel J. Chase held innumerable conferences with Ida Leiter and Burdeitta L. Forrest for the purpose of effecting an amicable settlement of the controversy, but no such result was obtained.

18. Ida Leiter's contentions were supported by the following facts and circumstances:

a. On or about February 11, 1947, Samuel J. Chase urged the Probate Court to rule that all the properties of George and Ida Leiter, however held, were includible in the estate and to fix the executors' bond accordingly, but the Probate Court refused to so rule and fixed the executors' bond in the sum of \$46,000.00.

b. Thereafter, Samuel J. Chase filed a petition for instructions with the Probate Court for the purpose of resolving the controversy, the matter was heard on various dates, the Court refused to rule on the issue, and the matter was dropped from the calendar.

c. Thereafter, an inheritance tax appraiser valued the estate of George L. Leiter at an approximate value of \$70,300.00.

d. By letter dated July 10, 1947, the Treasury Department advised Ida Leiter that the co-owner and P.O.D. Bonds could be paid to her or reissued in her name alone or in her name with a co-owner or beneficiary, and by letter dated August 6, 1947, the Treasury Department transmitted forms to Ida Leiter for that purpose. The Treasury Department maintained that position in similar letters dated July 10, 1947; August 6, 1947; October 9, 1947; November 3, 1947; November 18, 1947; December 11, 1947, and February 17, 1948.

19. On September 3, 1947, petitioner Samuel J. Chase filed an action in the Superior Court of the State of California, in and for the County of Alameda, Number 205572, and titled, "Complaint for Declaratory Judgment and Equitable Relief for Possession of Real and Personal Property, and to Quiet Title Thereto and for Injunction and Accounting."

20. In said case of Chase v. Leiter, petitioner Samuel J. Chase was represented by Charles Wade

which is included in the Amended Petition of Samuel J. Chase, one of the executors, and attached hereto and marked Exhibit 2-B at pages 17 to 20, inclusive, and on February 16, 1949, petitioner Leslie W. Irving received the Trial Court's second Memorandum Opinion which is contained in the same Exhibit 2-B at pages 26 to 29, inclusive.

29. The judgment as rendered gave substantial support to Ida Leiter's contentions and to the Treasury Department's regulations, and petitioner Samuel J. Chase appealed—see Clerk's Transcript on Appeal, Exhibit 1-A.

30. The opening brief prepared by petitioner Leslie W. Irving in connection with said appeal is attached hereto and marked Exhibit 3-C, and the Reply Brief is marked Exhibit 4-D.

31. On January 24, 1950, petitioner Leslie W. Irving argued the matter before the Appellate Court, and, on March 13, 1950, the District Court of Appeals rendered its decision, a copy of which is attached to Exhibit 2-B at pages 1 to 24, inclusive.

32. The decision rendered by said District Court of Appeals fully recognized the contentions of petitioner Samuel J. Chase, and on or about May 15, 1950, the Appellate Court's Remittitur was filed with the County Clerk of Alameda County, copies of modified findings and amended judgment were served on defendants, and a copy left with the Trial Judge, and on May 22, 1950, the modified findings and amended judgment were signed and filed.

33. The records of the County Clerk of Alameda County show the following register entries in connection with the case of Chase v. Leiter:

Sept.	3, 1947	Complaint filed—summons issued.
Feb.	5, 1948	Summons filed.
Feb.	26, 1948	Answer and cross-complaint of Ida Leiter filed.
Feb.	27, 1948	Answer of Samuel J. Chase, etc. to cross-complaint filed.
March	8, 1948	Answer of Burdeitta L. Forrest as executrix, etc., to cross-complaint of Ida Leiter filed.
March	11, 1948	Memorandum to set cause for trial.
April	12, 1948	Action set for trial May 4, 1948, 9:30 a.m.
April	13, 1948	Notice of time of trial filed.
May	4, 1948	Notice of withdrawal of attorney filed.
May	4, 1948	Association of attorney filed.
May	4, 1948	Amendment to answer of Ida Leiter filed.
May	3, 1948	Affidavit for subpoena duces tecum filed—subpoena issued.
May	4, 1948	Action on trial continued to May 5, 1948, at 10:00 a.m. further trial.
May	5, 1948	Action on trial.
May	5, 1948	Defendant's motion for a nonsuit is denied.
May	5, 1948	Defendant's motion to file an amended cross-complaint to conform to proof is granted; and may be deemed as denied without the necessity of filing an answer thereto by plaintiff.
May	5, 1948	Action continued to June 25, 1948, 10:00 a.m. for further trial on briefs (30x5x15).
May	14, 1948	Notice of withdrawal of attorney filed.
May	15, 1948	Amendment to cross-complaint to conform to proofs filed.
June	25, 1948	Action on trial and submitted.
Sept.	10, 1948	Submission is set aside and continued to October 4, 1948, at 10:00 a.m. for further hearing.
Oct.	4, 1948	Oral argument presented and the matter is then submitted.
Oct.	11, 1948	Judgment granted in favor of plaintiff (plaintiff to present findings, etc.).

Oct.	11, 1948	Defendant's reply and memorandum filed.
Oct.	11, 1948	Defendant's reply and memorandum filed.
Oct.	11, 1948	Plaintiff's memorandum of points filed.
Oct.	11, 1948	Plaintiff's reply brief filed.
Oct.	11, 1948	Plaintiff's memorandum of points filed.
Feb.	11, 1949	Plaintiff's motion to set aside Order of Judgment on October 11, 1948, and to reopen its cases granted.
Feb.	11, 1949	Action on trial and submitted.
Feb.	15, 1949	Judgment granted to plaintiff (plaintiff to present findings).
April	27, 1949	Findings filed.
April	27, 1949	Judgment filed.
April	28, 1949	Notice of entry of judgment filed.
April	28, 1949	Memorandum of costs filed (\$73.95).
May	2, 1949	Notice of intention to move for new trial filed.
May	2, 1949	Notice of motion to tax costs May 9, 1949, at 2:00 p.m., Department 11.
May	3, 1949	Motion for new trial set for May 27, 1949, at 2:30 p.m.
May	9, 1949	Motion to tax costs granted in sum of \$42.45.
May	27, 1949	Motion for a new trial continued to June 3, 1949, 3:00 p.m.
June	3, 1949	Motion for a new trial denied.
June	10, 1949	Notice of appeal and for transcripts filed.
June	29, 1949	Notice of appeal by Ida Leiter filed.
June	29, 1949	Notice to Clerk to prepare transcript file.
June	29, 1949	Admission of personal arrangement for compensation for preparation of transcript filed.
July	2, 1949	Release of deposit for Court Reporter filed.
July	2, 1949	Clerk's and Reporter's Transcripts are completed and filed this day.
July	13, 1949	Clerk's and Reporter's Transcripts are certified as correct by the Clerk.
July	14, 1949	Clerk's and Reporter's Transcripts sent by Railway Express to Clerk of Supreme Court.
Sept.	6, 1949	Stipulation re Exhibits filed.
Jan.	5, 1950	Notice by plaintiff re Exhibits on appeal filed.
Jan.	9, 1950	Plaintiff's Exhibits 1, 3, 4, 8, 9, 11, 12, 18, 27, 28 to 34, and defendant's Exhibits A to E sent by Railway Express to Clerk District Court of Appeals.

May	22, 1950	Modified findings, etc. filed.
May	22, 1950	Amended Judgment filed.
May	22, 1950	Amended Judgment entered Volume 333, page 295.
May	22, 1950	Withdrawal of attorneys filed.
May	23, 1950	Notice of Judgment filed.
May	15, 1950	Remittitur filed (affirmed as amended).
May	15, 1950	Certified copy of opinion filed.
June	5, 1950	Stipulation to withdraw Exhibits filed.
June	5, 1950	Receipt for Exhibits filed.

34. A Probate Court Order is essential to payment of fees for extraordinary services.

35. On September 27, 1950, a petition for compensation for extraordinary services rendered by petitioner Samuel J. Chase and petitioner Leslie W. Irving in connection with the case of Chase v. Leiter was filed with the Superior Court. Hearings on said petition were had on November 1, 1950, December 6, 1950, December 13, 1950, January 10, 1951, and the matter was continued on 11 occasions from February 1, 1951, to July 25, 1951, at which time the Trial Court suggested defects in the petition and the filing of an amended petition.

36. On August 29, 1951, an amended petition for compensation for extraordinary services rendered by petitioner Samuel J. Chase, and petitioner Leslie W. Irving, in connection with the case of Chase v. Leiter, was filed with the Trial Court, Exhibit 2-B.

37. Pursuant to the order of the Probate Court, citation was issued and citations and a copy of the amended petition were served on all parties interested, and said matter came on for trial before the

Alameda County Superior Court on the following days: December 7, 1951; December 18, 1951; December 19, 1951; December 20, 1951, and January 31, 1952.

38. Evidence, oral and documentary, was submitted relating to the services rendered and the reasonable value thereof. In connection with said petition for compensation for extraordinary services rendered in the case of Chase v. Leiter, petitioner Leslie W. Irving submitted the briefs which are attached hereto and marked Exhibits 5-E and 6-F.

39. On February 14, 1952, the Court signed an order approving payment for services rendered in the case of Chase v. Leiter as follows: To the executor, Samuel J. Chase, \$22,500.00; to the attorney, Leslie W. Irving, \$45,000.00; a copy of the Court's Order is attached hereto and marked Exhibit 7-G, said order provides in part as follows:

“It Appearing to the Court and the Court Finds:

“That, as set forth in said Amended Petition, said Samuel J. Chase, said Executor, and said L. W. Irving, Attorney for said Executor, during the period from the commencement of the administration of said estate and up to and including the 22nd day of May, 1950, to wit, the date upon which, after the appeals from the Judgment of the Superior Court of the State of California, in and for the County of Alameda, in the action of Samuel J. Chase, Executor, etc., plaintiff, vs. Ida Leiter, et al., Defendants, Action No. 205572, Modified Findings and Amended

Judgment were signed, filed, entered and Notice of Entry thereof was given, respectively performed extraordinary services and were and are respectively entitled to extra compensation therefor out of said estate in the amounts hereinafter set forth.”

40. On or about April 14, 1952, the time for appealing from said Court's Order fixing compensation for services rendered in the case of Chase v. Leiter expired.

41. On May 28, 1952, petitioner Samuel J. Chase received the sum of \$22,500.00 for services rendered in connection with the case of Chase v. Leiter pursuant to said Court's Order.

42. On September 8, 1952, petitioner Leslie W. Irving received payment of the sum of \$45,000.00 for services rendered in the case of Chase v. Leiter pursuant to said Court's Order.

43. On January 15, 1953, petitioners Leslie W. and Ruth L. Irving sent the Collector of Internal Revenue, San Francisco, a check for \$2,994.60 in payment of income tax for the calendar year 1952, and a copy of the 1952 return and letter of transmittal are attached hereto and marked Exhibit 8-H.

44. On May 28, 1952, Samuel J. Chase received the sum of \$22,500.00 for extraordinary services rendered in connection with the case of Chase v. Leiter pursuant to said Court Decree. Petitioner Samuel J. Chase and Jeannette S. Chase filed sepa-

rate returns. A copy of the return of Samuel J. Chase is attached hereto and marked Exhibit 9-I, and a copy of the return of Jeannette S. Chase is attached hereto and marked Exhibit 10-J.

45. On September 10, 1952, petitioners, Leslie W. and Ruth L. Irving, addressed a letter to the Collector of Internal Revenue, San Francisco, California, a copy of which is attached hereto and marked Exhibit 11-K, and enclosed a check in the amount of \$8,089.16, which is held in 9B Account (Suspense).

46. The services rendered by petitioner Leslie W. Irving in connection with the case of Chase v. Leiter and the petition for compensation for extraordinary services were personal services and said services embraced the following, among others: Preparation for the trial of the case of Chase v. Leiter, trial, preparation of briefs, various Court appearances, appeals from Trial Court's decision, argument in Appellate Court, briefs for Appellate Court, preparation of petition for compensation for extraordinary services rendered in connection with the case of Chase v. Leiter, various appearances before the Probate Court, preparation of briefs and memoranda.

47. The services rendered by petitioner Samuel J. Chase in connection with the case of Chase v. Leiter and the petition for compensation for extraordinary services were personal services and said services embraced the following, among other

things: Endeavors to resolve the Chase v. Leiter controversy through negotiations with Ida Leiter and Burdeitta L. Forrest, Probate Court procedures, correspondence with the Treasury Department; the filing of suit; conferences with attorneys and opposing counsel; selection of counsel; preparation for trial, appearance as a witness in the Chase v. Leiter trial; review of briefs, pleadings and Court decisions; appeal from Trial Court's decision; review of Appellate briefs and Appellate Court's decision; conferences with his attorney in connection with proceedings for extra compensation for extraordinary services rendered in connection with the case of Chase v. Leiter; review petition for compensation, data and briefs; conferences with witnesses; appearance as witness at the trial of petition for compensation for extraordinary services rendered in connection with the case of Chase v. Leiter.

48. During the month of May, 1950, the Internal Revenue Department initiated an audit of the income tax returns of George and Ida Leiter covering the period from 1941 to 1946. The Government claimed that George and Ida Leiter had not fully reported their income for said period.

49. On or about September 6, 1950, the Internal Revenue Agent advised petitioners Leslie W. Irving and Samuel J. Chase that he had secured certain financial statements which George L. Leiter had submitted to Central Bank. Said statements appear

at pages 18 to 20, inclusive of Exhibit 12-L. The Revenue Agent proposed additional taxes which with interest would have amounted to \$210,202.56. A copy of said proposal is set forth on page 22 of Exhibit 12-L.

50. The matter was settled by payment of tax in the amount of \$46,410.14 in accordance with the computation set forth on page 36 of Exhibit 12-L.

51. The sum of \$71,377.06 had been paid on account of Federal estate tax and interest, and during January of 1951, a claim for refund of Federal estate taxes was filed, a copy of which claim is attached hereto and marked Exhibit 13-M. On or about August 19, 1952, a refund in the amount of \$45,549.04 was received.

52. On June 29, 1953, a petition for allowances for extraordinary services performed by Samuel J. Chase in connection with State inheritance taxes for the period February 27, 1947, to June 22, 1950, inclusive, and for Leslie W. Irving for the period November 6, 1948, to August 12, 1952, inclusive; for services rendered in connection with Federal estate tax by Samuel J. Chase for the period August 27, 1947, to May 24, 1951, inclusive, and for additional services to be rendered; and for Leslie W. Irving for the period May 7, 1948, to August 19, 1952, inclusive, and for additional services to be rendered; for services rendered in connection with Federal income tax matters by Samuel J. Chase for the pe-

riod March 11, 1947, to January 3, 1952, inclusive; and for Leslie W. Irving for the period March 3, 1949, to June 5, 1951, inclusive; for services rendered in connection with State income tax by Leslie W. Irving for the period January 8, 1951, to February 1, 1951, inclusive; and for services rendered in connection with petitions for partial distributions by Samuel J. Chase for the period September 27, 1949, to June 25, 1952, inclusive; and for Leslie W. Irving for the period September 24, 1949, to April 23, 1952, and for services rendered and to be rendered by Samuel J. Chase and Leslie W. Irving in connection with the petition for extra compensation for extraordinary services rendered in the preceding matters, was filed with the Superior Court. A copy of said petition is attached hereto and marked Exhibit 12-L.

53. On August 3, 1953, said petition was transferred to Department One and set for hearing on August 27. On August 27 the matter was continued to November 6, at which time it was transferred to Department Seven. On November 6 the matter was tried, witnesses were sworn and examined and the matter continued until November 12, 1953.

54. On November 12, 1953, the Superior Court of the State of California, in and for the County of Alameda, ordered payment to Leslie W. Irving of the sum of \$40,000.00, and to Samuel J. Chase of the sum of \$20,000.00 for extraordinary services rendered in connection with the State inheritance

taxes, the Federal and State income taxes, Federal estate matters, and Petition for partial distributions, and a copy of said Court's Order is attached hereto and marked Exhibit 14-N.

55. A copy of the brief submitted in connection with said petition is attached hereto and marked Exhibit 15-O.

56. Following said Court's Order, the claim for refund of Federal estate taxes was reopened and on March 17, 1954, additional refund in the amount of \$22,263.98 was received.

57. On September 20, 1950, Samuel J. Chase and Burdeitta L. Forrest, executors, filed their third account with the Probate Court, and therein requested, among other things, reimbursement to Samuel J. Chase of expenses incurred in the case of Chase v. Leiter in the sum of \$865.22, and payment on account of statutory commissions of executors and statutory fees of attorney.

58. On October 10, 1950, the Probate Court issued its Order approving said third account and ordered reimbursement to Samuel J. Chase of the sum of \$865.22, and ordered payment on account of executors' statutory fees and commissions and statutory attorneys' fee as follows: To Samuel J. Chase, executor, the sum of \$2200.00, to Burdeitta L. Forrest, executrix, the sum of \$2200.00, to L. W. Irving, attorney, the sum of \$4400.00 as a portion of the statutory attorneys' fees and compensation. A copy of said Order is attached hereto and marked Exhibit 16-P.

59. Thereafter, said Leslie W. Irving paid a portion of said statutory fee, to wit, the sum of \$1500.00, to Charles Wade Snook.

/s/ LESLIE W. IRVING,
Counsel for Petitioners.

/s/ JOHN POTTS BARNES,
Chief Counsel, Internal Revenue Service, Counsel
for Respondent.

Filed August 16, 1955, T.C.U.S.

[Title of Tax Court and Cause.]

Docket Nos. 56169, 56183, 56230

Petitioner Samuel J. Chase was an executor of the estate of a California decedent, whose widow denied the claim of Chase as executor to the possession of certain property. Chase therefore brought suit against the widow also naming his co-executor as defendant because she would not join with him as plaintiff. Shortly before the trial of this case, Chase employed petitioner Leslie W. Irving as his attorney in this litigation on a contingent basis, but subject to the approval by the Probate Court of a petition for compensation. Some time after the trial of the case Irving became attorney for the estate. The litigation was successful and during the taxable year substantial fees were paid to Chase and Irving by the estate as compensation for extraordinary services rendered in this litigation which,

however, were less than 80 per centum of the total compensation received by Chase as executor and less than 80 per centum of all the compensation paid to Irving by the estate for legal services.

Held, section 107(a), I.R.C. 1939, not applicable to compensation received by Chase during taxable year, but is applicable to compensation received by Irving under rationale of *Marion B. Pierce*, 24 T.C. (April 29, 1955).

LESLIE W. IRVING, ESQ.,
For the Petitioners.

JOHN POTTS BARNES, ESQ.,
For the Respondent.

OPINION

Kern, Judge:

In Docket No. 56169, respondent determined a deficiency in the income tax of petitioners Leslie W. Irving and Ruth L. Irving for the year 1952 in the amount of \$19,468.06.

In Docket Nos. 56183 and 56230 respondent determined deficiencies in the income tax of petitioner Jeannette S. Chase and petitioner Samuel J. Chase for the year 1952 in the respective amounts of \$2,014.40 and \$2,155.78.

These cases were consolidated on joint motion and were submitted to the Court under Rule 30 upon a complete stipulation of facts.

The issue presented by the parties is whether petitioners are entitled to apply the provisions of section 107(a) of the Internal Revenue Code of 1939 to payments received by Leslie W. Irving and Samuel J. Chase in 1952 from the Estate of George L. Leiter, administered in the state court of California, for services rendered by them in connection with litigation instituted in a California Court by Chase, one of the executors of the estate, against the decedent's widow and his co-executor, in which Irving was engaged as counsel, when such payments were in amounts less than 80 per centum of the total amounts received from the estate respectively by Chase as executor's commissions and by Irving as attorney's fees. In his brief respondent says: "Respondent's denial of the application of Section 107(a) is based on the ground that the 80 per cent condition of the statute has not been met." As the case has been presented to us, that is the sole issue for the Court to decide.

We find the facts to be as stipulated and incorporate herein by this reference the stipulation of facts and exhibits attached thereto.

In order to give a factual background to our discussion of the issue presented in these proceedings, we shall set out a short resume of the facts stipulated. Necessarily, some of the facts contained in the long stipulation and the numerous exhibits are omitted from this resume but such omission is not to be taken as an indication that we have not given due

consideration to every fact established on the record.

Petitioners in Docket No. 56169 are husband and wife residing in California and filed their joint return for the period here involved with the Collector of Internal Revenue, San Francisco, California.

Petitioners in Docket Nos. 56183 and 56230 are husband and wife, residing in California, and filed separate returns for the period here involved with the same Collector of Internal Revenue.

Petitioner Leslie W. Irving (hereinafter referred to as "Irving") and petitioner Samuel J. Chase (hereinafter referred to as "Chase"), are lawyers.

One George L. Leiter died on January 23, 1947. A short time before his death he and his wife Ida signed a contract in the form of a joint will which provided that all of their property, regardless of how it was held or its nature when acquired, "shall be deemed to be community property." At that time the property had the approximate value of \$350,000 which included property held in joint tenancy or otherwise apparently payable to the survivor of the total approximate value of \$293,500, including joint bank accounts, annuities, United States Savings Bonds (Series G) and real estate.

By decedent's will Chase and decedent's daughter, Burdeitta L. Forrest, were named executors and testamentary trustees and were appointed as such executors by the proper California Court on February 11, 1947. One Charles W. Snook was the

sole attorney for the executors from the date of their appointment until May 14, 1948, the day before he took office as Judge of the California Superior Court to which he was appointed on April 12, 1948.

After decedent's death his wife Ida, as survivor, claimed the properties held in joint tenancy or otherwise apparently payable to the survivor while Chase contended that since the contract above referred to converted all of the property of decedent and his wife into community property, the executors were entitled to possession of all the property and Ida was entitled by the terms of the contract to only the income therefrom.

This dispute could not be settled amicably and Chase could not get a ruling on the matter from the Probate Court. Therefore, on September 3, 1947, Chase filed an action in the Superior Court of California titled "Complaint for Declaratory Judgment and Equitable Relief for Possession of Real and Personal Property, and to Quiet Title Thereto and for Injunction and Accounting" in which Ida Leiter was named defendant and Burdeitta L. Forrest was also named defendant because she had refused to join with Chase as a plaintiff. This action was filed on behalf of Chase by "Chas. Wade Snook, Attorney for Plaintiff." Ida was represented by counsel and Burdeitta was represented by other counsel.

On April 12, 1948, the day on which Snook was

appointed Judge, the case of Chase v. Leiter was set for trial on May 4, 1948.

“On April 15, 1948, petitioner Samuel J. Chase entered into an agreement with petitioner Leslie W. Irving which provided in substance that Leslie W. Irving would handle the case of Chase v. Leiter for said Samuel J. Chase, that compensation for services rendered by Leslie W. Irving would be contingent on success in this litigation and subsequent approval of a petition for compensation by the Probate Court and that said Leslie W. Irving would assist in presenting said petition for compensation to the Probate Court.”*

From April 15 to May 4, 1948, Irving prepared the case for trial and, among other services performed, he assembled the evidence and prepared a 75-page trial brief. On April 24, he was formally associated as attorney for the plaintiff in this case, which was tried on May 4, May 5, June 25 and October 4, 1948, and February 11, 1949.

On May 14, 1948, Irving was substituted for Snook as attorney for the executors of the estate of George L. Leiter.

The judgment of the trial Court in the case of Chase v. Leiter gave substantial support to Ida's contentions but an appeal was taken and the decision of the Court of Appeals fully recognized the contentions of Chase.

*Quoted from stipulation.

Thereafter, on September 27, 1950, a petition for compensation for extraordinary services rendered by Chase and Irving in connection with the case of *Chase v. Leiter* was filed in the appropriate Court. Hearings on this petition were held on November 1, December 6, and December 13, 1950, and January 10, 1951, and the matter was continued on eleven occasions from February 1, 1951, to July 25, 1951, at which time the Court suggested defects in the petition and the filing of an amended petition. Hearings were held on the amended petition, after proper notices, on December 7, December 18, December 19 and December 20, 1951, and January 31, 1952. On February 14, 1952, the Court signed an order finding that Chase and Irving in connection with the case of *Chase v. Leiter* "performed extraordinary services and were and are respectively entitled to extra compensation therefor out of said estate" in the amount of \$22,500 for Chase and \$45,000 for Irving, which amounts were paid to each of them later in the year, the payment to Chase being made on May 28 and the payment to Irving on September 8.

"The services rendered by petitioner Leslie W. Irving in connection with the case of *Chase v. Leiter* and the petition for compensation for extraordinary services were personal services and said services embraced the following, among others: Preparation for the trial of the case of *Chase v. Leiter*, trial, preparation of briefs, various Court appearances, appeals from Trial Court's decision, argument in

Appellate Court, briefs for Appellate Court, preparation of petition for compensation for extraordinary services rendered in connection with the case of Chase v. Leiter, various appearances before the Probate Court, preparation of briefs and memoranda.”*

“The services rendered by petitioner Samuel J. Chase in connection with the case of Chase v. Leiter and the petition for compensation for extraordinary services were personal services and said services embraced the following, among other things: Endeavors to resolve the Chase v. Leiter controversy through negotiations with Ida Leiter and Burdeitta L. Forrest, Probate Court procedures, correspondence with the Treasury Department; the filing of suit; conference with attorneys and opposing counsel; selection of counsel; preparation for trial, appearance as a witness in the Chase v. Leiter trial; review of briefs, pleadings and Court decisions; appeal from Trial Court’s decision; review of Appellate briefs and Appellate Court’s decision; conferences with his attorney in connection with proceedings for extra compensation for extraordinary services rendered in connection with the case of Chase v. Leiter; review petition for compensation, data and briefs; conferences with witnesses; appearance as witness at the trial of petition for compensation for extraordinary services rendered in connection with the case of Chase v. Leiter.”*

*Quoted from stipulation.

In May, 1950, an important tax matter came up in connection with the Federal income taxes of decedent for the years 1941 to 1946. The revenue agent proposed additional taxes which with interest would have amounted to over \$200,000. The matter was settled by the payment of tax in the amount of \$46,410.14.

Substantial services were also rendered to the estate by Chase and Irving in connection with the refund of Federal estate taxes, with state inheritance and income taxes and with petitions for partial distribution.

A petition for allowances for extraordinary services in connection with these tax matters and partial distributions was filed by Chase and Irving on June 29, 1953, and after due hearing the Court ordered payment to Chase of \$20,000 and to Irving of \$40,000 on account of such extraordinary services.

On October 10, 1950, the Probate Court "ordered payment on account of executors' statutory fees and commissions and statutory attorneys' fees as follows: to Samuel J. Chase, executor the sum of \$2,200.00, to Burdeitta L. Forrest, executrix, the sum of \$2,200.00, to L. W. Irving, attorney, the sum of \$4,400 as a portion of the statutory attorneys' fees and compensation." From the latter amount Irving paid \$1,500 to Snook.

The statutes of California provide that "the executor or administrator must take into his possession all the estate of the decedent, real and personal, and collect all debts due to the decedent or to the

estate.” Although the situation faced by Chase in his efforts to take into his possession as executor all of the estate of the decedent presented unusual difficulties, his services in this regard were undertaken pursuant to his duties as such executor, and were properly paid for by the estate by an allowance to “be made as the Court may deem just and reasonable for * * * extraordinary services, such as * * * litigation in regard to the property of the estate * * *,” in addition to regular percentage commissions provided by statute. All of his services compensated by the estate were services rendered by him as executor. In our opinion no part of these services can be treated separately with regard to the application of Section 107(a)¹, Alfred J. Loew, 17 T.C. 1349; even though compensated for as “extraordinary services,” Rosalyne A. Lesser, 17 T.C. 1479. See also, *Norcross v. United States*, 114 F. Supp. 51, *affd.* 222 F. 2d 209. Since the compensation received by Chase in the taxable year was less than 80 per centum of the total compensation received

¹Sec. 107 * * *

(a) Personal Services. If at least 80 per centum of the total compensation for personal services covering a period of thirty-six calendar months or more (from the beginning to the completion of such services) is received or accrued in one taxable year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual.

by him for his personal service as executor of the Leiter estate, he is not entitled to apply the provisions of this section to such compensation.

However, we reach a different conclusion with regard to the compensation received by Irving during the taxable year because of the peculiar circumstances incident to his employment by Chase to act as counsel for him in the case of *Chase v. Leiter*. At the time of his employment he was not the attorney for the estate, but was engaged by one of the executors to act as his attorney in that specific litigation, on a contingent basis dependent on the success of that litigation. It is true that another contingency was the approval of Irving's petition for compensation by the Probate Court, in the event that the litigation proved successful and it is also true that Irving later became attorney for the estate, but his right to a fee arose not because of his employment as attorney for the estate but because of his employment by Chase to represent him in that particular lawsuit at a time before he became attorney for the estate and with his fee being dependent on the success of that lawsuit. These circumstances, in our opinion, make his services in connection with this litigation divisible from his other services rendered as attorney for the estate under the rationale of *Estate of Marion B. Pierce*, 24 T.C. . . . (April 29, 1955). Therefore the fact that the compensation received by him for his services in connection with the case of *Chase v. Leiter* was less than 80 per centum of the total payments made to him by the

estate of Leiter does not preclude the application of Section 107(a) to the compensation received by him in the taxable year.

Decision will be entered for respondent in Docket Nos. 56183 and 56230.

Decision will be entered for petitioners in Docket No. 56169.

Filed December 6, 1955.

Served December 6, 1955.

The Tax Court of the United States,
Washington
Docket No. 56183

SAMUEL J. CHASE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, filed December 6, 1955, it is

Ordered and Decided: That there is a deficiency in income tax of \$2,014.40 for the year 1952.

/s/ JOHN W. KERN,
Judge.

Entered December 9, 1955.

Served December 9, 1955.

The Tax Court of the United States
Washington

Docket No. 56230

JEANETTE S. CHASE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, filed December 6, 1955, it is

Ordered and Decided: That there is a deficiency in income tax of \$2,155.78 for the year 1952.

/s/ JOHN W. KERN,
Judge.

Entered December 9, 1955.

Served December 9, 1955.

The Tax Court of the United States
Washington

Docket No. 56183

SAMUEL J. CHASE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ORDER VACATING DECISION
AND DECISION

For cause appearing of record, it is

Ordered: That the decision entered December 9, 1955, be and the same is hereby vacated and set aside, and it is further

Ordered and Decided: That pursuant to the determination of the Court, set forth in its Opinion filed December 6, 1955, there is a deficiency in income tax of \$2,155.78 for the year 1952.

/s/ JOHN W. KERN,
Judge.

Entered January 3, 1956.

Served January 4, 1956.

[Title of Tax Court and Cause.]

Docket No. 56230

ORDER VACATING DECISION
AND DECISION

For cause appearing of record, it is

Ordered: That the decision entered December 9, 1955, be and the same is hereby vacated and set aside, and it is further

Ordered and Decided: That pursuant to the determination of the Court, as set forth in its Opinion filed December 6, 1955, there is a deficiency in income tax of \$2,014.40 for the year 1952.

/s/ JOHN W. KERN,
Judge.

Entered January 3, 1956.

Served January 4, 1956.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket Nos. 56183, 56230

SAMUEL J. CHASE, JEANNETTE S. CHASE,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

Taxpayer, Samuel J. Chase, and Jeannette S. Chase, the petitioners in this cause, by Leslie W.

Irving, counsel, hereby file their petition for a review by the United States Court of Appeals for the Ninth Circuit of that part of the opinion of the Tax Court of the United States filed December 6, 1955, holding that Section 107(a), I.R.C. 1939, not applicable to compensation received by Samuel J. Chase during the taxable year 1952, and for a review of the decisions by the Tax Court of the United States entered on January 3, 1956, determining deficiencies in petitioners' federal income taxes for the calendar year 1952 in the following respective amounts: Samuel J. Chase, \$2,155.78, Jeannette S. Chase, \$2,014.40.

I.

Petitioners, Samuel J. Chase and Jeannette S. Chase are husband and wife, residing at 5965 Keith Avenue, Oakland 18, California, and said petitioners filed separate returns for the period herein involved with the Collector of Internal Revenue, San Francisco, California.

II.

Nature of the Controversy

The controversy involves the proper determination of petitioners' liability for federal income taxes for the calendar year 1952.

Samuel J. Chase was appointed one of the executors of the estate of George L. Leiter, deceased, during February of 1947. The properties of George L. and Ida Leiter, his wife, had an approximate value of \$350,000.00, and included property held in joint

tenancy or otherwise apparently payable to the survivor, of the total approximate value of \$293,500.00.

Decedent's widow contended that she was entitled to said joint tenancy property and Samuel J. Chase contended, on the contrary, that the executors were entitled to it.

Samuel J. Chase's services in connection with said controversy covered a period of more than thirty-six calendar months, and said services embraced the following, among others: Endeavors to resolve the Chase v. Leiter controversy through negotiations with Ida Leiter and Burdeitta L. Forrest, Probate Court procedures, correspondence with the Treasury Department; the filing of suit; conference with attorneys and opposing counsel; selection of counsel; preparation for trial, appearance as a witness in the case of Chase v. Leiter; review of briefs, pleadings and Court decisions; appeal from Trial Court's decision; review of Appellate briefs and Appellate Court's decision; conferences with his attorney in connection with proceedings for extra compensation for extraordinary services rendered in connection with the case of Chase v. Leiter; review petition for compensation, data and briefs; conferences with witnesses; appearance as witness at the trial of petition for compensation for extraordinary services rendered in connection with the case of Chase v. Leiter.

Samuel J. Chase's contentions were fully sustained by the Appellate Court's opinion (see Chase v. Leiter 96 C. A. 2d 439).

On February 14, 1952, the Probate Court ordered payment of \$22,500.00 to Samuel J. Chase for extraordinary services rendered in connection with the case of Chase v. Leiter.

Petitioners Samuel J. Chase, Jeannette S. Chase filed separate returns for the calendar year 1952 and reported said \$22,500.00 under Section 107(a) of the I.R.C.

The Commissioner of Internal Revenue held that petitioners were not entitled to the benefits of Section 107(a) because of a separate and subsequent Probate Court Order, dated November 12, 1953. ordering payment to Samuel J. Chase of the sum of \$20,000.00 for other, separate and distinct extraordinary services rendered, and determined deficiencies for the year 1952 in the following amounts: Samuel J. Chase, \$2,155.78, Jeannette S. Chase, \$2,014.40.

III.

The said taxpayers, Samuel J. Chase and Jeannette S. Chase, being aggrieved by the findings of fact and conclusions of law, contained in said findings and opinion of the Court insofar as they pertained to said taxpayers, and by its decision with respect to said petitioners entered pursuant thereto, desire to obtain a review thereof insofar as it pertains to said taxpayers by the United States Court of Appeals for the Ninth Circuit (being the Circuit in which is located the office to which was made the return of the tax in respect of which the liability arises).

IV.

Assignments of Error

Petitioners assign as error the following acts and omissions of the Tax Court of the United States:

(1) The failure to allow said petitioners the benefits of Section 107(a) I.R.C. 1939 with respect to the separately ordered compensation for extraordinary services rendered in connection with the case of *Chase v. Leiter*.

(2) The findings of deficiencies for the year 1952 in lieu of a determination that there is no income tax due from the petitioners for said year.

/s/ LESLIE W. IRVING,
Counsel for Petitioners.

Duly verified.

Received and filed March 6, 1956, T.C.U.S.

[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION
FOR REVIEW

To John Potts Barnes, Chief Counsel, Internal Revenue Service, Internal Revenue Building, Washington 25, D. C.

You are hereby notified that the petitioners on the 6th day of March, 1956, filed with the Clerk of the Tax Court of the United States at Washington, D. C., a Petition for Review by United States Court of Appeals for the Ninth Circuit of the decision of

In the United States Court of Appeals
for the Ninth Circuit

No. 15090

SAMUEL J. CHASE, JEANNETTE S. CHASE,
Appellants,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF PARTS OF RECORD TO BE
PRINTED

Appellants in the above-entitled cause hereby adopt as their statement of points on which they intend to rely on this appeal the statement of points on appeal, as it now appears in the transcript of record herein.

Appellants hereby designate for printing the entire certified transcript of the record, save and except, Exhibits 1-A to 16-P, inclusive, which are referred to in the Stipulation of Facts.

/s/ LESLIE W. IRVING,
Attorney for Appellants.

Dated: April 6, 1956.

Affidavit of mail attached.

[Endorsed]: Filed April 9, 1956, U.S.C.A.

[Title of Court of Appeals and Cause.]

STIPULATION FOR REDUCTION
OF RECORD

It is hereby stipulated and agreed as follows:

1. The Petition for Review of Deficiency Determination filed by Jeannette S. Chase in Docket No. 56230 and the Commissioner's answers thereto are substantially identical with the Petition for Review of Deficiency Determination filed by Samuel J. Chase in Docket No. 56183 and the Commissioner's answer thereto, and said Petitions present the same question for decision except for immaterial differences in amounts of tax.

2. The Petition for Review of Deficiency Determination filed by Jeannette S. Chase in Docket No. 56230 and the Commissioner's answer thereto need not be printed as part of the record on appeal in the above-entitled matter, but her case may be considered on the pleadings of said Samuel J. Chase and the same judgment may be entered in both cases.

/s/ LESLIE W. IRVING,
Attorney for Appellants.

/s/ CHARLES K. RICE,
Attorneys for Appellee.

Dated: April 16, 1956.

[Endorsed]: Filed April 20, 1956.

